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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

SHAHROKH MIRESKANDARI, Plaintiff and Appellant, v. ASSOCIATED NEWSPAPERS LIMITED, et al., Defendants and Appellants.	B262942 (Los Angeles County Super. Ct. No. SC122225)

APPEAL from an order of the Superior Court of Los Angeles County, Gerald Rosenberg, Judge. Affirmed in part and reversed in part with directions.

Law Offices of Roger J. Diamond and Roger J. Diamond; Esner, Chang & Boyer, Stuart B. Esner and Joseph S. Persoff, for Plaintiff and Appellant.

Davis Wright Tremaine, Kelli L. Sager, Mary H. Haas, Nicolas A. Jampol and Dan Laidman, for Defendants and Appellants.

This appeal arises out of litigation between former English solicitor Shahrokh Mireskandari and Associated Newspapers Limited (Associated Newspapers), the publisher of the Daily Mail. Between 2008 and 2012, the Daily Mail published a series of articles that said, among other things, that Mireskandari was a "convicted conman with bogus legal qualifications" who had "conned his way" into the English legal profession. Mireskandari sued Associated Newspapers and Daily Mail reporter David Gardner (collectively, Associated Newspapers), alleging that they (1) intentionally intruded into his private affairs by "hacking into" his confidential education records and eavesdropping on his telephone conversations, (2) portrayed Mireskandari in a false light, and (3) violated Penal Code section 502, which prohibits unauthorized access to computer systems and data, by accessing Mireskandari's online educational information without permission.

Associated Newspapers filed a special motion to strike pursuant to the anti-SLAPP statute (Code Civ. Proc., § 425.16), which the trial court granted in part and denied in part.[1] Both sides appealed.

We conclude the anti-SLAPP motion should have been granted in its entirety. As to the first prong of the anti-SLAPP statute, we find that all three causes of action arose out of defendants' acts in furtherance of their right of free speech—namely, investigating and reporting the news—and none is barred by the "criminal conduct" exception to the anti-SLAPP statute. With regard to the second prong of the statute, we conclude that Mireskandari failed to demonstrate a probability of prevailing: The first and third causes of action (intrusion and violations of Penal Code section 502) are barred by the applicable statutes of limitations; and the second cause of action (false light) fails as a matter of law because the relevant statements are not provably false or, in the alternative, are

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[1] All subsequent undesignated statutory references are to the Code of Civil Procedure.

substantially true. Accordingly, we reverse the anti-SLAPP order insofar as it denies the motion to strike the cause of action for false light, and we otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Background

Mireskandari was educated in the United States and subsequently moved to London, England. He was admitted to the English bar as a solicitor in 2000, and became a partner in the law firm of Dean & Dean in 2005. He practiced law in London until December 2008, when the Solicitors Regulation Authority (SRA), the regulatory body for solicitors in England and Wales, took over Dean & Dean and suspended Mireskandari from law practice.

Beginning in September 2008, and continuing into early 2009, the Daily Mail published a series of unflattering articles about Mireskandari. Some of these articles were authored by Gardner, a Los Angeles-based reporter. Among other things, the articles asserted that Mireskandari had been convicted of fraud in California in connection with a telemarketing scam; claimed to have a bachelor's degree from the University of Pennsylvania, of which the university had no record; failed to pass his classes at a "minor local" law school in the United States; obtained his law degree from the American University of Hawaii, which subsequently was shut down by the courts; and overcharged clients for legal work. Additional articles about Mireskandari appeared in articles in the Daily Mail on February 15, 2012, and June 21, 2012. The investigation that resulted in those articles, as well as the articles themselves, are the subject of the present appeal.

II.

Disciplinary Proceedings Against Mireskandari[2]

Between April 1 and June 21, 2012, the Solicitors Disciplinary Tribunal (Tribunal)[3] held an evidentiary hearing to determine whether Mireskandari should be removed from the Roll of Solicitors (i.e., disbarred). Many of the allegations against Mireskandari concerned his purported misuse of client funds; as relevant to the present appeal, the Tribunal also considered allegations that Mireskandari had not truthfully represented his educational and criminal background when he applied for admission to the English bar. At the conclusion of the hearing, the Tribunal found as follows:

Mireskandari's misrepresentations concerning his educational qualifications: The Tribunal noted that in 1997, Mireskandari applied for an exemption from the Common Professional Exam (CPE),[4] representing that that he had earned a Bachelors of

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[2] The following summary of the disciplinary proceedings against Mireskandari is based on a transcript of the June 21, 2012 proceedings before the Solicitors Disciplinary Tribunal, and the September 13, 2012 Judgment of the Solicitors Disciplinary Tribunal. These documents were attached as exhibits to the declaration of Lindsay Warwick filed in support of Associated Newspapers's anti-SLAPP motion.

[3] The Tribunal "adjudicates upon alleged breaches of the rules and regulations applicable to solicitors and their firms, including The Solicitors' Code of Conduct 2007, the SRA Code of Conduct 2011, and the SRA Principles 2011. The rules and regulations are specifically designed to protect the public, including consumers of legal services, and to maintain the public's confidence in the reputation of the solicitors' profession for honesty, probity, trustworthiness, independence and integrity. [¶] The Tribunal adjudicates upon the alleged misconduct of registered foreign lawyers and persons employed by solicitors. It also decides applications by former solicitors for restoration to the Roll. . . . Solicitor Members are wholly independent of the Council of the Law Society and have no connection with the Solicitors Regulation Authority." (<http://www.solicitorstribunal.org.uk/about-us/> [as of Aug. 29, 2016].)

[4] The CPE "is sometimes referred to as a conversion course or Graduate Diploma in Law. It is an academic stage qualification for people who have an undergraduate degree, which is not in law or is not a qualifying law degree. This is an intensive course built around the core curriculum and assessment requirements of a qualifying law degree (QLD). It is specifically designed for graduates, whether or not in the UK, and for

Science in Business Administration (*summa cum laude*, 4.0 grade point average), a Masters of Science in International Law (*summa cum laude*), and a Doctorate of Jurisprudence (*summa cum laude*) from American universities. In reliance on these representations, British licensing authorities agreed to grant Mireskandari a certificate of exemption from the CPE and a certificate of completion of the academic stage of training. The Tribunal found that, in fact, Mireskandari's Doctorate of Jurisprudence and Masters of Science degrees were awarded by American University of Hawaii (AUH), an institution subsequently shut down by American authorities "for pedaling degrees illegally and without any license." The Tribunal also found that Mireskandari had failed his classes at two other California law schools, the Whittier School of Law (WSL) and the University of West Los Angeles School of Law (UWLA). The Tribunal concluded that it was not credible Mireskandari had obtained the post-graduate degrees he claimed, "particularly with regard to his poor results at WSL and the UWLA."

Mireskandari's misrepresentations regarding his practical training: The Tribunal noted that, prior to his admission to the English bar, Mireskandari had applied for a reduction in the amount of practical training he had to complete in order to practice law in England. In his application for a reduction in training, Mireskandari represented that he had been employed full-time by a Mr. O'Bryan, a California lawyer, for two years between August 1995 and August 1997; that he "handl[ed] [O'Bryan's] office's English cases;" and that the "extensive work conducted by [Mireskandari] had embraced civil as well as criminal cases." The Tribunal noted that, in fact, Mr. O'Bryan stated in a declaration that Mireskandari "had never been involved in any English legal cases and did no civil work in the mid-1990s." Further, during the same two-year period Mireskandari claimed to have worked full-time for Mr. O'Bryan, he also attended WSL

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individuals who have acquired career experience or academic/vocational qualifications that we consider to be equivalent to an undergraduate degree." (<https://www.sra.org.uk/faqs/contact-centre/students/resources/04-common-professional-examination-CPE/what-cpe.page> [as of Aug. 29, 2016].)

and claimed to have attended the American University of Hawaii. The Tribunal thus found it was not credible that Mireskandari had worked full-time for Mr. O'Bryan, had been involved in any English legal cases, or had done any civil work.

Failure to disclose criminal convictions: The Tribunal found that when Mireskandari applied for admission as a solicitor, he signed a declaration stating that he had never been convicted of any criminal offense. In fact, the Tribunal said, "in or about early 1991, [Mireskandari] had been convicted in Ventura County, California in respect of a telemarketing fraud where consumers had been cheated. [Mireskandari] had been found guilty on fifteen charges and had been sentenced to three years probation, ordered to serve ninety days in jail . . . and pay restitution of $6,813.90 to victims identified (as well as any other victims who came to the attention of the District Attorney or Probation Officer)." The Tribunal thus found Mireskandari's representations concerning his criminal history were "contradictory and suggestive of serious misrepresentations."

On the basis of these findings, the Tribunal found that Mireskandari's conduct "had shown a complete and blatant disregard for his professional obligations, his regulatory body and numerous clients who had suffered as a result of his actions." Further, if Mireskandari were allowed to continue to practice law, he would pose "a very significant risk to the public" and "[t]he Tribunal could identify no means by which he could rehabilitate himself" because "[h]is conduct had caused financial damage to former clients and counsel and no redress had been made." The Tribunal therefore ordered Mireskandari struck from the Roll of Solicitors.

III.

Mireskandari's Federal Lawsuit Against Associated Newspapers and Gardner

On April 4, 2012, Mireskandari sued Associated Newspapers, Gardner, and others in federal court in Los Angeles, alleging that the defendants had illegally gathered personal information about him and engaged in a smear campaign by publishing derogatory articles about him. The operative first amended complaint asserted causes of

action for violations of Business and Professions Code section 17200, breach of contract, intrusion, public disclosure of private facts, false light, invasion of privacy, tortious interference with contract, tortious interference with prospective economic advantage, computer fraud (18 U.S.C. § 1030), violations of Penal Code section 502, violations of Penal Code section 630, and intentional infliction of emotional distress, among others.

In June 2012, Associated Newspapers filed a special motion to strike all of Mireskandari's state law claims pursuant to the anti-SLAPP statute. As relevant to the present appeal, the district court granted the motion to strike without prejudice as to the causes of action for intrusion (third cause of action) and violations of Penal Code section 502 (eleventh cause of action), but denied it as to the cause of action for false light (fifth cause of action). The district court granted Mireskandari leave to file an amended complaint "addressing the deficiencies noted herein within thirty (30) days of the date of this order."[5]

In November 2013, Mireskandari filed a second amended complaint (SAC) in the federal action. The SAC abandoned several of the claims that had been struck by the federal court, but reasserted the claims for intrusion, false light, and violations of Penal Code section 502, among others. The SAC also included four new causes of action that purportedly arose under English law. On December 10, 2013, Associated Newspapers filed a second anti-SLAPP motion.

On January 12, 2014, Mireskandari lodged a third amended complaint, asserting that counsel had inadvertently omitted one cause of action from the SAC. Subsequently, on February 14, 2014, Mireskandari voluntarily dismissed the federal action without prejudice.

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[5] On October 25, 2013, Associated Newspapers appealed the district court's ruling with respect to the fifth cause of action for false light. That appeal is pending in the Ninth Circuit.

IV.

The Present Action

On March 14, 2014, Mireskandari filed the present action. The operative complaint alleges that in 2007, Mireskandari began pursuing a racial discrimination case against the London Metropolitan Police Authority and challenging racially discriminatory practices by the SRA. The SRA "became furious with" Mireskandari and "launched a campaign to destroy him, with the assistance of the Daily Mail." In furtherance of that campaign, the SRA investigated Mireskandari and leaked the results of its investigation to the Daily Mail. The Daily Mail also "launched its own 'investigation' of" Mireskandari, led by Gardner in California and two reporters in London. Gardner or the Daily Mail "hacked into Plaintiff's confidential education records," "eavesdropped on Plaintiff's private telephone calls," and "manufacture[d] false evidence about" him. The Daily Mail then used this information to publish "highly derogatory articles about Plaintiff and his clients," which "included the false and misleading 'Facts.' " The articles "also disparaged Plaintiff, calling him a 'con man' who had 'bogus' legal qualifications and who had conned his way into the English legal establishment." Those statements were "false and misleading, and they devastated Plaintiff personally and financially."

The first cause of action, for intrusion into private affairs, alleged that Associated Newspapers "intentionally intruded into Plaintiff's private affairs by: (a) publishing leaked information from the confidential SRA investigation; (b) contacting, bribing and working with Plaintiff's clients, colleagues, and attorneys to manufacture false evidence about Plaintiff; (c) hacking into Plaintiff's confidential education records; and (d) eavesdropping on Plaintiff's telephone conversations." The second cause of action, for false light, alleged that two articles, published in the Daily Mail on February 15, 2012, and June 21, 2012, portrayed Mireskandari in a false light. The third cause of action, for violation of Penal Code section 502, alleged that Gardner "knowingly accessed and without permission used Plaintiff's confidential education information from the [National Student Clearinghouse (NSC)]'s DegreeVerify website." Mireskandari

prayed for "damages for the economic, reputational and emotional harm he has suffered and continues to suffer."

Associated Newspapers filed an anti-SLAPP motion on September 8, 2014, urging that each of the three causes of action arose from conduct protected by the anti-SLAPP statute and was without merit. Specifically, Associated Newspapers asserted that (1) Mireskandari's false light claim failed because the offending statements were either subjective statements that were constitutionally protected, or were substantially true, and (2) Mireskandari's intrusion and Penal Code section 502 claims were based on conduct that allegedly occurred in 2008, and thus were time-barred.

Mireskandari opposed the motion. He urged that the anti-SLAPP statute did not apply because the conduct on which the complaint was based was unlawful, the statements on which the false light claim were based were provably false and misleading, and the intrusion and Penal Code section 502 claims were timely.

On March 4, 2015, the trial court granted the motion to strike the intrusion and Penal Code section 502 claims, finding that they arose out of conduct protected by the anti-SLAPP statute and Mireskandari had not shown a probability of prevailing. The court denied the motion to strike the cause of action for false light, finding that although it arose out of protected conduct, Mireskandari had established a probability of prevailing. Both parties appealed.

STATUTORY FRAMEWORK

The Legislature enacted section 425.16, the anti-SLAPP statute, "out of concern over 'a disturbing increase' " in civil suits "aimed at preventing citizens from exercising their political rights or punishing those who have done so." (*Simpson Strong–Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 21 (*Simpson*).) " ' "While SLAPP suits masquerade as ordinary lawsuits such as defamation and interference with prospective economic advantage, they are generally meritless suits brought primarily to chill the exercise of free speech or petition rights by the threat of severe economic sanctions against the defendant, and not to vindicate a legally cognizable right." ' " (*Ibid*.)

The statute provides for "a special motion to strike to expedite the early dismissal of these unmeritorious claims." (*Simpson, supra*, 49 Cal.4th at p. 21.) The motion involves a two-pronged process. With respect to the first prong, the defendant must make a prima facie showing that the plaintiff's cause of action arises from an act by the defendant in furtherance of the defendant's right of petition or free speech in connection with a public issue. (§ 425.16, subd. (b)(1).) If the defendant succeeds in making this showing, the court then considers the second prong—whether the plaintiff has demonstrated a probability of prevailing. (*Ibid*.) If plaintiff makes a showing of probable merit, the motion is denied; if plaintiff fails to make this showing, the motion is granted. (*Ibid*.) In ruling on the motion, "the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (*Id.*, subd. (b)(2).)

Subdivision (e) of section 425.16 provides that an "act in furtherance of a person's right of petition or free speech . . . in connection with a public issue" includes: "(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest."

We review the trial court's ruling on an anti-SLAPP motion de novo. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325 (*Flatley*).)

ASSOCIATED NEWSPAPERS'S APPEAL

I.

Overview

The cause of action for false light alleges that in two articles, published on February 15, 2012, and June 21, 2012, the Daily Mail portrayed Mireskandari in a false light. Specifically, Mireskandari asserts that these articles described him as a "convicted conman with bogus legal qualifications" who had "conned" his way into the English legal profession.

Associated Newspapers contends the trial court erred in denying the motion to strike the false light cause of action. With regard to the first prong, Associated Newspapers contends the false light claim arises from written statements made in connection with an official proceeding (§ 425.16, subd. (e)(2)), and written statements made in a public forum in connection with an issue of public interest (*id.*, subd. (e)(3).) With regard to the second prong, Associated Newspapers asserts that the false light claim is time-barred, and the statements at issue are not actionable.

Mireskandari responds that defendants' illegal activities render the anti-SLAPP statute inapplicable; the false light claim is not time-barred; and the statements on which the false light claim is based are actionable statements of fact.

II.

First Prong: Protected Conduct

The first prong of the anti-SLAPP analysis requires us to determine whether Associated Newspapers has made a prima facie showing that the false light claim arises from acts in furtherance of its right of petition or free speech in connection with a public issue. (§ 425.16, subd. (b)(1).)

Associated Newspapers contends—and Mireskandari does not urge to the contrary—that the false light cause of action arises out of defendants' free speech activities within the meaning of the anti-SLAPP statute. We agree. Section 425.16, subdivision (e)(3) provides that an "act in furtherance of a person's right of . . . free

speech . . . in connection with a public issue" includes "any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest." Publishing newspaper articles is plainly an exercise of free speech. (E.g., *Hunter v. CBS Broadcasting, Inc.* (2013) 221 Cal.App.4th 1510, 1521 ["Our courts have previously recognized that '[r]eporting the news' . . . qualif[ies] as 'exercise[s] of free speech.' "].) Further, the sheer number of articles published by the Daily Mail about Mireskandari—at least 28 articles in 2008 and 2009, according to the allegations of Mireskandari's complaint—suggest that Mireskandari's professional and educational qualifications were matters of interest to the British public at large.

Mireskandari contends that notwithstanding the apparent public interest, Associated Newspapers's publication of articles discussing him was not entitled to anti-SLAPP protection because "defendants' illegal activities render the anti-SLAPP statute inapplicable." Citing *Flatley, supra,* 39 Cal.4th 299, Mireskandari urges that the California Supreme Court has held that criminal conduct is not protected by the anti-SLAPP statute; further, he says, "the claim challenged in this appeal arises out of actions that constitute illegal and criminal conduct," namely "hack[ing] into Plaintiff's confidential educational records and eavedropp[ing] into his telephone conversations."

We do not agree that the "criminal conduct" exception (which we discuss more fully in connection with Mireskandari's appeal, *infra*) has any application to Mireskandari's false light cause of action. As Associated Newspapers correctly notes, Mireskandari's false light claim is based on the *publication* of newsworthy material, not the *gathering* of such material. (See *Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 277 [false light claim requires "*a publication* that is false, defamatory, unprivileged, and has a tendency to injure or cause special damage"], italics added.) Mireskandari does not (and cannot) argue that the publication of news articles is criminal conduct. Accordingly, the

criminal conduct exception has no application to the question of whether the anti-SLAPP statute applies to the false light cause of action.[6]

III.

Second Prong: Likelihood of Prevailing

Having determined that Associated Newspapers met its prong one burden to show protected activity, we next determine whether Mireskandari has met his prong two burden of demonstrating a probability of prevailing.

The elements of a "false light" defamation claim are identical to the elements of a defamation claim—the plaintiff must prove a *false*, *defamatory*, *unprivileged* communication that has a tendency to injure or cause special damage. (*Hawran v. Hixson, supra*, 209 Cal.App.4th at p. 277.) Mireskandari's false light claim is based on the following allegedly defamatory statements that appeared in articles published by the Daily Mail in 2012:

(1) February 15, 2012: Mireskandari is "a convicted conman with bogus legal qualifications."

(2) June 21, 2012 article: Mireskandari is "a fraudster who had conned his way into the UK legal profession."

For the reasons that follow, we conclude that Mireskandari failed to make a prima facie showing that the challenged statements are provably false, as required to establish a cause of action for false light; in the alterative, they are substantially true. Thus, the special motion to strike should have been granted as to this cause of action.

A. "Provable Falsity" and "Substantial Truth"

The requirement that a false light or defamation plaintiff prove "falsity" is grounded in the First Amendment itself. (*Baker v. Los Angeles Herald Examiner* (1986)

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[6] Having so concluded, we do not address Associated Newspapers's alternative prong one contentions that (1) the district court's conclusion that the false light claim arose from protected conduct should be given preclusive effect, or (2) the state court action was an impermissible amendment in violation of the anti-SLAPP statute.

42 Cal.3d 254, 259-260.) "To state a defamation claim that survives a First Amendment challenge, thus, a plaintiff must present evidence of a statement of fact that is 'provably false.' (*Seelig* [*v. Infinity Broadcasting Corp.* (2002)] 97 Cal.App.4th 798, 809, quoting *Milkovich v. Lorain Journal Co.* (1990) 497 U.S. 1, 20 [*Milkovich*].) ' "Statements do not imply a provably false factual assertion and thus cannot form the basis of a defamation action if they cannot ' "reasonably [be] interpreted as stating actual facts" about an individual.' [Citations.] Thus, 'rhetorical hyperbole,' 'vigorous epithet[s],' 'lusty and imaginative expression[s] of . . . contempt,' and language used 'in a loose, figurative sense' have all been accorded constitutional protection. [Citations.]" (*Ferlauto v. Hamsher* (1999) 74 Cal.App.4th 1394, 1401.) The dispositive question . . . is whether a reasonable trier of fact could conclude that the published statements imply a *provably false factual assertion.* (*Moyer v. Amador Valley J. Union High School Dist.* (1990) 225 Cal.App.3d 720, 724.)' (*Seelig, supra,* at p. 809.)" (*Nygard, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1048, italics added.)

To ascertain whether the statements in question are provably false factual assertions, courts consider the " ' "totality of the circumstances." ' " (*Seelig, supra,* 97 Cal.App.4th at p. 809.) Whether challenged statements convey the requisite factual imputation is ordinarily a question of law for the court. (*Id.* at p. 810.)

In *James v. San Jose Mercury News, Inc.* (1993) 17 Cal.App.4th 1 (*James*), the court applied this standard to conclude that the plaintiff could not prove a libel claim because none of the assertedly libelous statements were provably false. There, a criminal defense attorney sued a newspaper and one of its reporters after the newspaper published an article criticizing the attorney's litigation tactics in defense of a man charged with molesting a young girl. (*Id.* at pp. 4-8.) The court acknowledged that the article "undeniably impugned [the attorney's] professional reputation"—indeed, it said, the article suggested that in the opinion of the prosecutor, the victim's father and the columnist, the defense attorney "is a member of a class of lawyers that engages in, and his conduct in this instance is an example of, sleazy, illegal, and unethical practice

against which the public should be warned." (*Id*. at p. 12.) The court said, however, that the proper test was not whether the statements were insulting or injurious to the subject's reputation, but whether "a reasonable fact finder could conclude that the publication as a whole, or any of its parts, directly made or sufficiently implied a false assertion of defamatory *fact* that tended to injure [the attorney's] reputation." (*Id*. at p. 13.)

The court concluded that many of the column's statements fell into the "protected zone of ' "imaginative expression" ' or ' "rhetorical hyperbole" ': [Defense attorney] James's acquisition of the records was a 'really scary part of this story'; in the father's view James went to ' "extreme lengths" '; in [the prosecutor's] view the defense practice he described and criticized was 'a common and sleazy tactic to ruin kids as witnesses' that made him 'angry'; [the prosecutor] is ' "seeing case after case in which the defense goes on a fishing expedition to attack the character of the kid" '; taken as a whole the column was '[a] sad lesson in "justice" '; the columnist wanted readers to '[c]onsider' his column a 'warning.' " (*James*, *supra*, 17 Cal.App.4th at p. 14.) According to the court, each of these statements "is clearly recognizable as opinion and could not reasonably be understood as a statement of literal fact." (*Ibid*.)

The remaining statements, the court said, "fall somewhere between fact and hyperbole. . . . To determine whether these statements should be regarded as fact or as opinion[, the court] 'rel[ied] on *Milkovich's* first test: Do the statements contain provably false factual connotation?' " (*James*, *supra*, 17 Cal.App.4th at p. 15.) It concluded that they did not. "The statements that 'when the legal community turns on kids, it doubles their trauma,' and that counsel ' "get[s] hassled all the time by attorneys wanting school records without going through the proper motions," ' contain too many generalizations, elastic terms, and elements of subjectivity to be susceptible of proof or disproof. When does the 'legal community' 'turn on' 'kids'? What is 'trauma' in this context, and how can its increments be measured? What does 'hassled' mean? What are 'the proper motions,' and what is the implication of the fact attorneys do not want to go through them: Beyond 'hassling,' are we to understand that these attorneys would simply take the

records without going through the proper motions?" (*Ibid*.) Further, "The columnist's perception that 'the judge has taken a dim view of the defense tactics' is plainly labeled as opinion but arguably implies that the judge has indeed taken 'a dim view.' But what is a 'dim view'? In common parlance it means disapproval or dissatisfaction. But how much or how little of either would suffice to connote a 'dim view'? These matters, again, are not susceptible of proof or disproof." (*Ibid*.) Thus, the court concluded, because no reasonable fact finder could have found explicit or implicit false statements of fact, summary judgment was properly granted. (*Id*. at p. 19.)

The court reached a similar conclusion in *Reed v. Gallagher* (2016) 248 Cal.App.4th 841 (*Reed*). There, Reed and Gallagher were rival candidates for the California Assembly. During the final weeks of the campaign, Gallagher ran a television ad characterizing Reed as an "unscrupulous lawyer." After the election, Reed sued Gallagher for defamation based on statements made in the ad. Gallagher filed a special motion to strike, which the trial court granted. Reed appealed. (*Id.* at pp. 846-847.)

The Court of Appeal affirmed. After concluding that the defamation claim was based on protected activity, the court considered whether Reed had demonstrated a probability of prevailing on the merits, and specifically whether the statements he challenged declared or implied provably false assertions of fact. (*Reed*, *supra*, 248 Cal.App.4th at pp. 854-866.) The court concluded they did not:

(1) Reed contended Gallagher defamed him by stating in the ad that, "Legal records show that Reed is an unscrupulous lawyer who was sued for negligence, fraud and financial elder abuse." Reed conceded that the statement, "Reed is an unscrupulous lawyer" would be a non-actionable statement of opinion, rather than a provably false assertion of fact, but contended the statement "*Legal records show* that Reed is an unscrupulous lawyer" implied the existence of legal records demonstrating that he lacked scruples. The court disagreed: "Reed's argument assumes that legal records could conclusively establish whether or not he is unscrupulous. [Footnote omitted.] However, trial courts do not adjudicate questions of character, and consequently do not generate

records establishing whether or not litigants have scruples. Instead, trial courts adjudicate disputes, which may or may not have some bearing on the character of the litigants, depending on one's point of view. It follows that determining what legal records show, so far as a person's character is concerned, involves a high degree of subjectivity. Such subjective judgments are incapable of being proved true or false. (*Gallagher v. Connell* (2004) 123 Cal.App.4th 1260, 1270 ['a subjective judgment of the person making the statement,' is not one that implies a provably false factual assertion].) We therefore conclude that the statement, 'Legal records show that Reed is an unscrupulous lawyer' does not declare or imply a provably false statement of fact. [¶] Having so concluded, we necessarily conclude that the statement is nondefamatory." (*Id.* at p. 857.)

(2) Reed also contended he was defamed by a former client's characterization of Reed as "a crook." According to Reed, the client's characterization, which was republished in the ad, falsely implied that he " 'committed illegal and unethical actions.' " (*Reed*, *supra*, 248 Cal.App.4th at p. 858.) Again, the court disagreed. It noted that the challenged statement was made "during the heat of a political campaign, a context in which the audience would naturally anticipate the use of rhetorical hyperbole." (*Id.* at p. 859.) Against this backdrop, the client's characterization of Reed as a "crook" "cannot reasonably be understood in the literal sense to mean that Reed committed any crime. [Citations.] Rather, the audience, having heard that [the client] and Reed had been involved in a fee dispute, would have reasonably understood [the client] to mean that Reed overcharged her for legal services. In context, [the client's] comments do not declare or imply a provably false factual assertion; they merely offer an opinion as to the value of Reed's legal services. [The client's] opinion, though unflattering, is not defamatory." (*Ibid.*)

(3) Reed contended finally that he was defamed by the statement, "Reed's even been ordered to pay back fees he improperly collected from an elderly client." (*Reed, supra,* 248 Cal.App.4th at p. 847.) The court noted that Reed did not deny that he improperly collected fees from the client, who was elderly, or that he paid some portion

of the fees back. Instead, he objected to the statement that he was *ordered* to pay back fees. The *Reed* court concluded the statement was "substantially true": " 'As in other jurisdictions, California law permits the defense of substantial truth and would absolve a defendant even if she cannot 'justify every word of the alleged defamatory matter; it is sufficient if the substance of the charge be proved true, irrespective of slight inaccuracy in the details." [Citation.]' (*Masson v. New Yorker Magazine, Inc*. (1991) 501 U.S. 496, 516-517.) 'Minor inaccuracies do not amount to falsity so long as "the substance, the gist, the sting, of the libelous charge be justified." [Citations.]' (*Id*. at p. 517.) In other words, a 'slight discrepancy' of facts (*Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 28) or a 'semantic hypertechnicality' (*James v. San Jose Mercury News* [(1993)] 17 Cal.App.4th [1,] p. 17) will not defeat a substantial truth defense." (*Id.* at pp. 860-861.) In the present case, "[w]e do not perceive a significant difference in the 'sting' of the technically inaccurate statement that Reed was *ordered* to pay back fees improperly collected from an elderly client and the accurate but still embarrassing statement that Reed, having been found to have improperly collected fees from an elderly client, returned the fees pursuant to a confidential settlement agreement before he could be ordered to do so. Whether Reed returned fees to [the client] pursuant to a court order, or returned them pursuant to a settlement entered as a consequence of a court order, would appear to us to make little difference in the mind of the average viewer." (*Id.* at pp. 861.)[7]

[7] The court noted, however, that it did not have to decide this issue because Reed failed to show that the statement was made with actual malice. (*Reed*, *supra*, 248 Cal.App.4th at p. 862.)

B. Neither of the Challenged Statements About Mireskandari Is "Provably False"; In the Alternative, Both Statements Are "Substantially True"

Applying the principles articulated in *James* and *Reed* here, we conclude that neither of the statements on which Mireskandari's false light claim is based is provably false; in the alternative, both are substantially true.

The statements that Mireskandari is a "convicted conman with bogus legal credentials" and a "fraudster who had conned his way into the UK legal profession" contain terms that are too imprecise to be susceptible of proof or disproof. To paraphrase *James*, what—precisely—is a "conman" or a "fraudster"? To which "legal credentials" is the author referring, and by what standard do we measure whether such credentials are "bogus"? What does it mean to "con" one's way into the legal profession, and how would one judge whether Mireskandari did so? Does "conning" one's way into the profession imply the absence of *any* legal training, or something else entirely? In the absence of standards by which to measure these imprecise phrases, their truth or falsity simply cannot be determined, and thus their alleged falsity cannot be proven.

In the alternative, we conclude that the phrases on which Mireskandari bases his false light claim are substantially true. As we have said, California permits the defense of "substantial truth": A statement is not false so long as " 'the substance, the gist, the sting, of the libelous charge be justified.' " (*Masson v. New Yorker Magazine, Inc.*, *supra*, 501 U.S. at p. 517.) Here, the record before the trial court established that the Solicitors Disciplinary Tribunal found that Mireskandari had been convicted in California of 15 counts relating to telemarketing fraud. We do not perceive a significant difference between "gist" or "sting" of the indisputably true statement that a British disciplinary tribunal found Mireskandari had been convicted by an American court of telemarketing fraud, on the one hand, and characterization of Mireskandari as a "fraudster" and a "conman," on the other. Similarly, we see no meaningful difference between the statements that Mireskandari had "bogus legal credentials" and "had conned his way into the UK legal profession," on the one hand, and the Tribunal's express finding that

Mireskandari obtained exemptions from the academic and practice prerequisites for admission to the English Roll of Solicitors on the basis of "misrepresentations as to his academic credentials," "documents which contained misrepresentations," and "by failing to disclose that he had been convicted of criminal offenses in the United States."

Mireskandari contends the Associated Newspapers's statements about his legal qualifications are not substantially true "[b]ecause a reasonable reader of Defendants' statements would believe Plaintiff was never qualified to practice law in England." We disagree: To the contrary, we believe the only reasonable reading of the statement that Mireskandari "conned his way into the UK legal profession" is that he had been granted permission to practice law in England—had he not been, he could not have been "*in*" the English legal profession—but that such permission was improperly or fraudulently obtained.

Mireskandari also contends that the phrase "convicted conman" is not substantially true because "[Business and Professions Code] section 17500 covers such a wide range of acts that it criminalizes acts that a reasonable person would not consider to be the acts of a 'conman.' " Again, we do not agree. The dictionary definition of "con man" is "a person who tricks other people in order to get their money." (<http://www.merriam-webster.com/dictionary/con%20man> [as of Aug. 29, 2016].) This accurately—albeit imprecisely—summarizes the Tribunal's conclusions that Mireskandari "had been convicted in Ventura County, California in respect of a telemarketing fraud where consumers had been cheated," and that all the charges against Mireskandari on which the convictions were based "involved dishonesty and were matters of moral turpitude."

Because the published statements on which Mireskandari bases his false light claim either are not provably false or, in the alternative, are substantially true, he cannot

prevail on his cause of action for false light. Accordingly, the special motion to strike the false light claim should have been granted.[8]

MIRESKANDARI'S APPEAL

I.

First Prong: Protected Conduct

As we have said, under the first prong of the anti-SLAPP statute, defendants must make a prima facie showing that the claims asserted against them arise from acts in furtherance of their rights of petition or free speech in connection with a public issue. (§ 425.16, subd. (b)(1).) Mireskandari appears to concede that the intrusion and Penal Code section 502 claims arose out of Associated Newspapers's speech, but he urges these causes of action alleged "illegal and criminal conduct"—specifically, "wiretapping" and "hacking"—and thus are not subject to the anti-SLAPP statute. Associated Newspapers acknowledges an "illegality" exception to the first prong of the anti-SLAPP statute, but contends the exception is narrow and does not apply in the present case.

For the reasons that follow, we conclude the trial court did not err in finding the intrusion and Penal Code section 502 claims subject to the anti-SLAPP statute.[9]

A. The "Criminal Conduct" Exception to the Anti-SLAPP Statute

Our Supreme Court carved out a narrow "criminal conduct" exception to the anti-SLAPP statute in *Flatley*, *supra*, 39 Cal.4th 299. There, the plaintiff sued the defendant, an attorney, for civil extortion and other torts. The plaintiff's action was based on a letter the attorney sent to plaintiff, which claimed that plaintiff had raped the attorney's client and demanded a seven-figure payment to settle the client's claims. The attorney filed a special motion to strike the action, urging that the letter was a prelitigation settlement

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[8] Having so concluded, we do not address Associated Newspapers's alternative contention that the false light claim is barred by the statute of limitations.

[9] Because we so conclude, we do not reach Associated Newspapers's alternative contention that the district court conclusively determined this issue, and thus Mireskandari is precluded from relitigating it.

offer, and therefore the claims arose from the attorney's exercise of his constitutionally protected right of petition. The trial court denied the motion, and the Court of Appeal affirmed, holding that because the attorney's letter constituted criminal extortion as a matter of law, the anti-SLAPP statute did not apply. (*Id.* at p. 305.)

The Supreme Court affirmed, concluding that section 425.16 does not apply to activity that is illegal. Thus, if "either the defendant *concedes* the illegality of its conduct or the illegality is *conclusively shown* by the evidence," the anti-SLAPP motion must be denied. (*Flatley*, *supra*, 39 Cal.4th at p. 316, italics added.) If, however, a factual dispute exists about the legitimacy of the defendant's conduct, such dispute "cannot be resolved within the first step [of the anti-SLAPP analysis] but must be raised by the plaintiff in connection with the plaintiff's burden to show a probability of prevailing on the merits." (*Ibid*.)

In a companion case to *Flatley* decided the same day, the Supreme Court interpreted analogous "illegality" language in the "SLAPPback" statute, section 425.18.[10] (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260 (*Soukup*).) Section 425.18 precludes the use of the anti-SLAPP statute to dismiss SLAPPbacks "by a party whose filing or maintenance of the prior cause of action from which the SLAPPback arises *was illegal as a matter of law*" (§ 425.18, sub. (h), italics added); thus, the issue before the court was the meaning of " 'illegal as a matter of law.' " (*Soukup*, at p. 283.)

The court noted that in adopting this phrase, the Legislature "appears to have had in mind decisions by the Court of Appeal that have held that the anti-SLAPP statute is not available to a defendant who claims that the plaintiff's cause of action arises from assertedly protected activity when that activity is illegal as a matter of law and, for that reason, not protected by the First Amendment." (*Soukup*, *supra*, 3 Cal.4th at p. 284.)

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10 " 'SLAPPback' means any cause of action for malicious prosecution or abuse of process arising from the filing or maintenance of a prior cause of action that has been dismissed pursuant to a special motion to strike under Section 425.16." (§ 425.18, subd. (b)(1).)

Under these decisions, the court said, "if a defendant's assertedly protected constitutional activity is alleged to have been illegal and, therefore, outside the ambit of the anti-SLAPP statute, the illegality must be established as a matter of law either through the defendant's concession or because the illegality is conclusively established by the evidence presented in connection with the motion to strike." (*Id*. at p. 285.) The court explained the parties' respective burdens with regard to establishing illegality as follows:

"The burden of establishing that the underlying action was illegal as a matter of law should be shouldered *by the plaintiff* . . . . In the ordinary SLAPP case, the defendant's initial burden in invoking the anti-SLAPP statute is to make ' "a threshold showing that the challenged cause of action is one arising from protected activity." ' [Citations.] There is no further requirement that the defendant initially demonstrate his or her exercise of constitutional rights of speech or petition was valid as a matter of law. [Citation.] Consistent with these principles, a defendant who invokes the anti-SLAPP statute should not be required to bear the additional burden of demonstrating in the first instance that the filing and maintenance of the underlying action was not illegal as a matter of law. Moreover, placing this burden on the defendant would be impractical and inefficient because it would require the defendant to identify and address every conceivable statute that might have had some bearing on the underlying action and then prove a negative—that the underlying action did not violate any of these laws.

"Accordingly, once the defendant has made the required threshold showing that the challenged action arises from assertedly protected activity, the plaintiff may counter by demonstrating that the underlying action was illegal as a matter of law because either the defendant concedes the illegality of the assertedly protected activity or the illegality is *conclusively established* by the evidence presented in connection with the motion to strike. In doing so, the plaintiff must identify with particularity the statute or statutes violated by the filing and maintenance of the underlying action. [Citation.] This requirement of identifying a specific statute, violation of which the plaintiff contends is illegal as a matter of law, is consistent with the narrow nature of the exemption set forth

in section 425.18, subdivision (h) *because it prevents a plaintiff from advancing a generalized claim that a defendant's conduct was illegal and therefore subject to the exemption*. In this same vein, the requirement of specificity provides notice to both the defendant and the court about the particular statute or statutes the defendant is alleged to have violated as a matter of law so as to allow the defendant to intelligibly respond to, and the court to assess, the claim. Additionally, as part of the plaintiff's burden of demonstrating illegality as a matter of law, the plaintiff must show the *specific manner* in which the statute or statutes were violated with reference to their elements. A generalized assertion that a particular statute was violated by the filing or maintenance of the underlying action without a particularized showing of the violation will be insufficient to demonstrate illegality as a matter of law." (*Soukup*, *supra*, 39 Cal.4th at pp. 286-287, italics added.)

Nearly every appellate opinion decided post-*Flatley* and *Soukup* has limited the "criminal conduct" exception to cases where criminal conduct is either *conceded* or *undisputed*—i.e., where there is no factual dispute as to whether such alleged criminal conduct occurred. For example, in *Dwight R. v. Christy B.* (2013) 212 Cal.App.4th 697, 712, the court held that the plaintiff's "mere *allegation*" that the defendant engaged in coaching and conspiracy "is insufficient to render [defendant's] alleged actions unlawful as a matter of law and outside the protection of Code of Civil Procedure section 425.16." Similarly, in *Cross v. Cooper* (2011) 197 Cal.App.4th 357, 386, the court held that the criminal conduct exception did not apply because "[n]ot only did [defendant] not concede criminal conduct, but we do not find this to be one of those rare cases in which there is uncontroverted and uncontested evidence that establishes the crime as a matter of law." And, in *Seltzer v. Barnes* (2010) 182 Cal.App.4th 953, 964-965, the court held that plaintiff's mere *allegations* of improper collusion among the defendants in prior litigation were not sufficient to defeat defendants' first prong showing that actions alleged were within the anti-SLAPP statute because plaintiff "fails to demonstrate the absence of relevant factual disputes." (*Id.* at p. 965.) The court explained: "[I]f a plaintiff

contesting the validity of a defendant's exercise of protected rights 'cannot demonstrate as a matter of law that the defendant's acts do not fall under section 425.16's protection, then the claimed illegitimacy of the defendant's acts is an issue which the plaintiff must raise *and* support." (*Ibid*.)

Only one post-*Flatley* opinion has reached a different result. In *Gerbosi v. Gaims, Weil, West & Epstein, LLP* (2011) 193 Cal.App.4th 435 (*Gerbosi*), the plaintiff alleged that the defendant law firm intercepted her confidential telephone conversations by unlawful wiretaps and eavesdropping. (*Id.* at p. 441.) The trial court denied the law firm's anti-SLAPP motion, and the law firm appealed, contending the criminal conduct exception did not apply because the evidence of wiretapping was disputed. (*Id.* at pp. 442-443.) The Court of Appeal disagreed, concluding that there need not be *undisputed* evidence of criminal activity to take otherwise protected activity outside of the protection of the anti-SLAPP statute;[11] instead, it interpreted *Flatley* to mean that the anti-SLAPP statute does not apply if the *alleged* misconduct is illegal as a matter of law. (*Gerbosi*, at p. 446.) In the case before it, because the alleged conduct—wiretapping—was indisputably illegal, the complaint was not subject to the anti-SLAPP statute. (*Id.* at pp. 446-447.)

Mireskandari contends that *Gerbosi* correctly interprets *Flatley*, and he urges us to adopt its analysis. We decline to do so. We are unaware of any other case that, like *Gerbosi*, has interpreted *Flatley* to bar anti-SLAPP motions where the claims sought to be stricken merely *allege* criminal conduct. Rather, the weight of authority narrowly interprets *Flatley* to require the party opposing an anti-SLAPP motion to *prove* the absence of a factual dispute as to the commission of criminal conduct. Further, the

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[11] According to the *Gerbosi* court: "[Defendant's] argument that its evidence showed it did not do the acts that [plaintiff] alleges it did is more suited to the second step of a anti-SLAPP motion. A showing that a defendant did not do an alleged activity is not a showing that the alleged activity is a protected activity." (*Gerbosi, supra*, 193 Cal.App.4th at pp. 446-447.)

Gerbosi rule would permit "conduct that would otherwise come within the scope of the anti-SLAPP statute [to] lose its coverage . . . simply because it is *alleged* to have been unlawful or unethical. If that were the test, the statute . . . would be meaningless." (*Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 910-911.) We decline to interpret the statute in a manner that would render it meaningless.[12]

B. Mireskandari Has Not Demonstrated That the Criminal Conduct Exception Applies in This Case

Having concluded that the criminal conduct exception to the anti-SLAPP statute requires evidence of conceded or undisputed criminal conduct, we now consider whether Mireskandari has made the required showing. For the reasons that follow, he has not.

Mireskandari asserts that his intrusion and Penal Code section 502 claims allege criminal conduct—namely, "hacking" into his confidential educational records and eavesdropping on his telephone conversations. He thus suggests that these causes of action "are not subject to the anti-SLAPP statute," and, therefore, this court "need not consider the second prong of the anti-SLAPP analysis." As we have said, however, the criminal conduct exception is not established by mere *allegations* of criminal acts—instead, a plaintiff must establish either that (1) defendants have *conceded* the criminal misconduct, or (2) the illegality is *conclusively shown* by the evidence.

There can be no doubt that Associated Newspapers has *not* conceded criminal misconduct: In its cross-respondent's brief, Associated Newspapers states that "[Associated Newspapers] does not concede *any* illegal conduct; it consistently has maintained that Plaintiff's allegations are entirely baseless." We therefore consider

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[12] *Malin v. Singer* (2013) 217 Cal.App.4th 1283 (*Malin*), which Mireskandari cites in his cross-appellant's reply brief, does not assist him. The *Malin* court did not apply the criminal conduct exception or hold that the activity alleged was illegal as a matter of law. Rather, *Malin* held that the defendants failed to meet their threshold burden to show that the plaintiff's civil rights claim was based on activity protected by the anti-SLAPP statute because the "gravamen" of plaintiff's complaint was computer hacking and wiretapping, not prelitigation investigation. (*Id.* at p. 1303.)

whether the evidence before the trial court in connection with the anti-SLAPP motion "conclusively" demonstrates illegality with regard to the two criminal statutes Mireskandari asserts were violated: Penal Code sections 632 and 502, subdivision (c)(2).

Penal Code section 632: Penal Code section 632 provides that a person is subject to criminal penalties if he or she "intentionally and without the consent of all parties to a confidential communication, by means of any electronic amplifying or recording device, eavesdrops upon or records the confidential communication." (*Id.*, subd. (a).)

On appeal, Mireskandari does not identify any *evidence* before the trial court that would tend to establish a violation of Penal Code section 632. Instead, he urges that *"*[*i*]*n his pleadings*, Plaintiff has conclusively alleged, and Defendants have impliedly conceded, that defendant Gardner, while performing his duties for defendant [Associated Newspapers], engaged in conduct that would constitute a violation of California Penal Code § 632." (Italics added.) As we have said, however, a plaintiff's *allegation* that defendant committed an illegal act is insufficient to require a defendant to marshal evidence that he or she did *not* commit such an act. And while Mireskandari asserts that he "presented three volumes of evidence in support of [his] opposition to defendants' motion to strike," including "declarations by numerous people personally attesting to the criminal and tortious actions taken by Defendants," he does not point us to any evidence of a Penal Code section 632 violation.

Appellate courts repeatedly have cautioned that " '[i]t is not the function of [appellate] court[s] to comb the record looking for the evidence or absence of evidence to support [a party's] argument. [Citations.]' (*People ex rel. Reisig v. Acuna* (2010) 182 Cal.App.4th 866, 879; see Cal. Rules of Court, rule 8.204(a)(1)(C) [appellate briefs must be supported by record citations]; *People ex rel. Strathmann v. Acacia Research Corp*. (2012) 210 Cal.App.4th 487, 502-503 [articulating rule that if party fails to support its argument with necessary citations to the record the argument will be deemed waived].)" (*Garcia v. Seacon Logix, Inc*. (2015) 238 Cal.App.4th 1476, 1489; see also *People v. Smith* (2015) 61 Cal.4th 18, 48 [" ' "It is neither practical nor appropriate for us

to comb the record on [appellant's] behalf." ' "].) Thus, Mireskandari's failure to provide us with citations to relevant evidence in support of his Penal Code section 632 argument constitutes a forfeiture of this issue. (See *Garcia v. Seacon Logix, Inc.*, at p. 1489.)[13]

Penal Code section 502: We reach the same conclusion with regard to Penal Code section 502, which imposes criminal penalties for various kinds of unauthorized access to computers and computer data. On appeal, Mireskandari cites to the complaint's *allegations* of Penal Code section 502 violations, but he does not refer us to any portions of the record that provide *evidence* relevant to this issue. Instead, he urges: "*As Plaintiff pleaded*, defendant Gardner and defendant SRA accessed the National Student Clearinghouse network without permission in order to obtain Plaintiff's confidential academic records. . . . Defendant Gardner then published Plaintiff's records in the Daily Mail. These facts, uncontested by Defendants, conclusively establish that Defendants engaged in acts in violation of Cal. Penal Code § 502." (Italics added.) Mireskandari's illegality argument, therefore, necessarily fails.

II.

Second Prong: Likelihood of Prevailing

A. Intrusion Claim (First Cause of Action)

Associated Newspapers contended in the trial court, and the trial court agreed, that Mireskandari's intrusion claim was time-barred by the two-year statute of limitations period of section 335.1. Mireskandari urges this conclusion was erroneous because although the actionable intrusions occurred in 2008, he did not learn of them until 2011: "While Plaintiff may have been aware that Defendants were publishing his private

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[13] For the same reason, we do not reach Mireskandari's contention that the trial court erred in sustaining Associated Newspapers's evidentiary objections to his evidence. Because Mireskandari has not argued that the exclusion of any specific evidence constituted prejudicial error, the trial court's ruling on Mireskandari's evidentiary objections provides no basis on which to reverse the order. (E.g., *Hayman v. Block* (1986) 176 Cal.App.3d 629, 640 ["the appellant has the burden of pointing out any evidentiary errors that prejudiced his position"].)

information, he had no reason of knowing their method of acquiring this private information was through illegally eavesdropping on his private phone calls and illegally accessing the [National Student Clearinghouse (NSC)] website. As Plaintiff pleaded, he found these facts out in 2011 and 2012 and timely brought these claims thereafter."

Associated Newspapers responds that regardless of when Mireskandari *actually* learned of the alleged intrusions, his pleadings and evidence establish that he was on inquiry notice of them in 2008, and thus the statute of limitations began to run at that time. Associated Newspapers asserts: "Because plaintiff's intrusion claim is based on [Associated Newspapers] obtaining allegedly 'confidential' information about him . . . , the first article should have raised Plaintiff's 'suspicion,' obliging him to 'go find the facts,' and starting the clock on this claim."

As we now explain, Associated Newspapers is correct.

1. General Principles Regarding Statutes of Limitations

A plaintiff must bring a claim within the limitations period after accrual of the cause of action. (*Fox v. Ethicon Endo-Surgery, Inc*. (2005) 35 Cal.4th 797, 806-807 (*Fox*).) Generally speaking, a cause of action accrues when it is complete with all of its elements. (*Ibid*.) However, "[a]n important exception to the general rule of accrual is the 'discovery rule,' which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." (*Ibid*.)

"A plaintiff has reason to discover a cause of action when he or she 'has reason at least to suspect a factual basis for its elements.' [Citations; see also *Gutierrez v. Mofid* [(1985)] 39 Cal.3d [892,] p. 897 ['the uniform California rule is that a limitations period dependent on discovery of the cause of action begins to run no later than the time the plaintiff learns, or should have learned, the *facts* essential to his claim'].) Under the discovery rule, suspicion of one or more of the elements of a cause of action, coupled with knowledge of any remaining elements, will generally trigger the statute of limitations period. [Citations.] . . . . Rather than examining whether the plaintiffs suspect facts supporting each specific legal element of a particular cause of action, *we look to*

whether the plaintiffs have reason to at least suspect that a type of wrongdoing has injured them." (*Fox, supra*, 35 Cal.App.4th at p. 807, italics added.)

Thus, the statute of limitations begins to run " 'when the plaintiff suspects or should suspect that [his] injury was caused by wrongdoing, that someone has done something wrong to [him]. . . . [T]he limitations period begins once the plaintiff " ' "has notice or information of circumstances to put a reasonable person *on inquiry* . . . ." ' " . . . A plaintiff need not be aware of the specific "facts" necessary to establish the claim; that is a process contemplated by pretrial discovery. Once the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, [he] must decide whether to file suit or sit on [his] rights. So long as a suspicion exists, it is clear that the plaintiff must go find the facts; [he] cannot wait for the facts to find [him].' [Citation.]" (*Goldrich v. Natural Y Surgical Specialties, Inc*. (1994) 25 Cal.App.4th 772, 779; see also *Cain v. State Farm Mut. Auto. Ins. Co*. (1976) 62 Cal.App.3d 310, 314-315 [discovery rule applies to cause of action for invasion of privacy].)

"The Legislature, in codifying the discovery rule, has . . . required plaintiffs to pursue their claims diligently by making accrual of a cause of action contingent on when a party discovered or *should have* discovered that his or her injury had a wrongful cause. (E.g., Code Civ. Proc., §§ 340.1, subd. (a) ['within three years of the date the plaintiff discovers or reasonably should have discovered'], 340.15, subd. (a)(2) ['[w]ithin three years from the date the plaintiff discovers or reasonably should have discovered'], 340.2, subd. (a)(2) ['[w]ithin one year after the date the plaintiff either knew, or through the exercise of reasonable diligence should have known'], 340.5 ['one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered'].) This policy of charging plaintiffs with presumptive knowledge of the wrongful cause of an injury is consistent with our general policy encouraging plaintiffs to pursue their claims diligently. [Citation.]

"In order to rely on the discovery rule for delayed accrual of a cause of action, '[a] plaintiff whose complaint shows on its face that his claim would be barred without

the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery *and* (2) *the inability to have made earlier discovery despite reasonable diligence*.' [Citation.] In assessing the sufficiency of the allegations of delayed discovery, the court places the burden on the plaintiff to 'show diligence'; 'conclusory allegations will not withstand demurrer.' [Citation.]

"Simply put, in order to employ the discovery rule to delay accrual of a cause of action, a potential plaintiff who suspects that an injury has been wrongfully caused must conduct a reasonable investigation of all potential causes of that injury. If such an investigation would have disclosed a factual basis for a cause of action, the statute of limitations begins to run on that cause of action when the investigation would have brought such information to light. In order to adequately allege facts supporting a theory of delayed discovery, the plaintiff must plead that, despite diligent investigation of the circumstances of the injury, he or she could not have reasonably discovered facts supporting the cause of action within the applicable statute of limitations period." (*Fox, supra*, 35 Cal.4th at pp. 808-809, italics added.)

2. Mireskandari Has Not Established the Factual Predicate for Delayed Discovery

Mireskandari's complaint alleges that the conduct that forms the basis for his intrusion claim—the Daily Mail's alleged receipt of "leaked information about [the SRA's] investigation of Plaintiff," "hack[ing] into Plaintiff's educational records," and "eavesdropp[ing] on Plaintiff's telephone calls"—occurred in 2008. Because the limitations period for invasion of privacy claims is two years (§ 335.1), Mireskandari's cause of action for intrusion, which plaintiff asserted for the first time in the federal court action in 2012, thus is time-barred unless made timely by the delayed discovery rule.

Mireskandari asserts that although the alleged wrongful conduct occurred in 2008, his intrusion claim did not accrue until 2011 and 2012, when he says he first learned that Associated Newspapers "eavesdrop[ed]" on his telephone conversations and "hack[ed] into [his] confidential education records." As we have said, however, the statute of

limitations begins to run not when a plaintiff *actually* learns that his injury had a wrongful cause, but when he " 'suspects *or should suspect* that [his] injury was caused by wrongdoing' "—i.e., once he " ' " ' "has notice or information of circumstances to put a reasonable person *on inquiry* . . . ." ' " ' " (*Goldrich v. Natural Y Surgical Specialties, Inc.*, *supra*, 25 Cal.App.4th at p. 779, italics added.) The question before us, therefore, is whether Mireskandari has made a prima facie showing that he did not have reason to suspect his alleged intrusion injury was caused by wrongdoing until 2011 or 2012.

We conclude, contrary to Mireskandari's assertion, that he was on inquiry notice of his intrusion claim in September 2008 when the Daily Mail published its first articles about him. According to Mireskandari, the Daily Mail published more than 20 articles about him between September 2008 and January 2009. The first article, published on September 11, 2008, "refers to my request for political asylum in the United States and my student visa in the UK when I was a minor." Articles published by the Daily Mail the same day asserted that Mireskandari was "being investigated by the Solicitors[] Regulation Authority," failed a law course at "a minor local university" in California, and "[a]cquired his American legal degree from a tinpot 'university' run from a small office in Hawaii, which was shut down over fears it was peddling bogus qualifications."

Mireskandari asserts that all of this information was confidential and could not have been legally obtained by the Daily Mail. Specifically, Mireskandari's declarations filed in opposition to the anti-SLAPP motions in the federal proceedings and below assert that Mireskandari understood that his request for political asylum was "private and confidential information that [I] did not share with anyone and that could not be obtained without illegally obtaining it from my UK Home Office Immigration files." Such immigration files "were strictly confidential and could not lawfully be disclosed to third parties." Mireskandari also asserted in his declarations that he had been told by the SRA that its investigation was "strictly confidential," and that "[a]t the time the Daily Mail was tapping my [telephone] conversations in September 2008, I had wondered how the Daily Mail had obtained and reported on private academic and immigration information."

By Mireskandari's own admission, then, he knew as early as September 2008 that the Daily Mail was publishing information about him that he believed was confidential and could not have been lawfully obtained. Since he believed the information could not have been obtained lawfully, he necessarily suspected that it had been obtained *unlawfully*. This suspicion of wrongdoing required Mireskandari to "conduct a reasonable investigation of all potential causes of that injury" and triggered the running of the statute of limitations as to all alleged wrongdoing that such an investigation would have brought to light. (*Fox, supra*, 35 Cal.4th at pp. 808-809.)[14]

Under the Supreme Court's holding in *Fox*, in order to establish a prima facie case that he was not on inquiry notice of his intrusion claim in 2008, Mireskandari had to provide some evidence that, "despite diligent investigation of the circumstances of the injury, he . . . could not have reasonably discovered facts supporting the cause of action within the applicable statute of limitations period." (*Fox, supra*, 35 Cal.4th at p. 809.) He did not do so. Indeed, Mireskandari's opposition to Associated Newspapers's anti-SLAPP motion makes absolutely no showing that the facts on which he relies to prove his intrusion claim could not have been discovered within two years of the publication of the September 11, 2008 articles. Accordingly, Mireskandari has not made a prima facie case of delayed discovery, and thus his intrusion claim is barred by the statute of limitations.

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[14] Mireskandari asserts that in 2008, he "had no idea that the Daily Mail and SRA were conspiring against [him]" or that "the Daily Mail had eavesdropped on my private telephone conversations and hacked into my confidential educational records," and he had "no reason to suspect these things." As we have said, however, the statute of limitations begins to run not when a plaintiff suspects a particular kind of wrongdoing, but when he suspects "that his or her injury had *a* wrongful cause." (*Fox, supra*, 35 Cal.4th at p. 808, italics added.) Because Mireskandari plainly suspected an intrusion *of some kind* into his private affairs in September 2008, it is irrelevant that he did not suspect the particular intrusions on which he now bases his intrusion claim.

B. Penal Code Section 502 Claim (Third Cause of Action)

Mireskandari's third cause of action alleges a violation of Penal Code section 502. That section makes unlawful a variety of kinds of "tampering, interference, damage, and unauthorized access to lawfully created computer data and computer systems." (Pen. Code, § 502, subd. (a).) An action under this section must be brought "within three years of the date of the act complained of, or the date of the discovery of the damage, whichever is later." (Pen. Code, § 502, subd. (e)(5).)

Mireskandari alleges that Gardner violated Penal Code section 502 when, on September 5, 2008, he "knowingly accessed and without permission used Plaintiff's confidential information from the NSC's DegreeVerify website." He asserts the cause of action is timely because he "did not learn about Gardner's unlawful acts, or in the exercise of reasonable diligence have reason to suspect them, until, at the earliest, October 2009" and "asserted this claim in a federal case filed in April 2012." Associated Newspapers disagrees: It asserts that under Penal Code section 502's plain language, "the statute of limitations begins running, at *latest*, after *the damage* is discovered, not when the plaintiff discovers the allegedly wrongful conduct." Thus, it contends that the Penal Code section 502 claim is time-barred.

We agree with Associated Newspapers that the Penal Code section 502 claim is barred by the statute of limitations. Although we are not aware of any cases interpreting Penal Code section 502, subdivision (e)(5), courts interpreting statutes of limitations with similar "discovery" language have held such language to mean "the date that the plaintiff actually discovered the facts or *through the exercise of reasonable diligence should have discovered* the facts, consistent with the discovery rule." (E.g., *Pedro v. City of Los Angeles* (2014) 229 Cal.App.4th 87, 105, italics added; see also *State of California ex rel. Metz v. CCC Information Services, Inc.* (2007) 149 Cal.App.4th 402, 413-417; *Deveny v. Entropin, Inc.* (2006) 139 Cal.App.4th 408, 419-423.)

We reach a similar conclusion here, finding that "the date of the discovery of the damage" is the date on which the plaintiff actually discovers the damage *or* discovers

facts that would lead a reasonably prudent to *suspect* damage. (§ 502, subd. (e)(5).) Thus, an action under Penal Code section 502 must be brought within three years either of the date of the unlawful act, or the date on which the plaintiff actually discovers the damage, or the date on which the plaintiff discovers facts that would lead a reasonably prudent person to suspect damage.

Here, Mireskandari indisputably filed his Penal Code section 502 claim more than three years after Gardner allegedly accessed his educational records on the DegreeVerify website in September 2008. Further, Mireskandari discovered the damage he allegedly suffered as a result of the asserted section 502 violation—the "*use of* his confidential education information"—in September 2008, when the Daily Mail first published an article suggesting that Mireskandari had misrepresented his educational credentials.[15] Mireskandari did not file his federal action until April 2012. Accordingly, the Penal Code section 502 claim, too, is barred by the statute of limitations.

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[15] The September 11, 2008 article asserted, among other things, that Mireskandari's "main academic credential" was a bachelor's degree from the University of Pennsylvania, of which the university had no record; Mireskandari "started a law course at a minor local university," but "failed his exams miserably at the end of his first semester" and "failed his retakes"; and claimed to have obtained his law degree from American University of Hawaii, which subsequently was shut down by the American courts.

DISPOSITION

The March 5, 2015 order on defendants' anti-SLAPP motion is reversed insofar as it denies the special motion to strike the second cause of action (false light); in all other respects, the order is affirmed. The trial court is directed to enter a new and different order granting the motion in its entirety. Associated Newspapers shall recover its appellate costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

ALDRICH, J.

LAVIN, J.